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GEORGE A. WILLINGHAN, III
AUGUST LAW GROUP, LLC
P.O. BOX 19080
BALTIMORE, MD 21281-9080

EXAMINER	
SPAHN, GAY	
ART UNIT	**PAPER NUMBER**
3673	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/767,289	DEANGELIS, ROBERT LOUIS	
	Examiner	Art Unit	
	Gay Ann Spahn	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2005 and 16 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *4,11,12,14 and 15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-10,13 and 16-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 January 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

On page 2, line 11, of her Office Action mailed on 19 October 2004, Examiner Saldano indicated that claims 1, 3, 4, 13 and 16 are generic. However, the present examiner notes that claim 4 is not generic. Claim 4 recites "wherein the retainer structure comprises a plurality of sections, wherein each section is moveably attached to at least one other section." The specification identifies reference numeral "16" as representing a "plurality of sections" (see page 4 of the specification, lines 8-15) and discusses this structure with reference to Fig. 3. Claim 4 is clearly readable on the embodiment or species of the invention shown in Figs. 3-4 and claim 4 is not generic to all species of the invention.

Thus, claim 4, as well as claims 11, 12, 14, and 15, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim 4, as well as non-elected claims 11, 12, 14, and 15, will be rejoined if a claim generic to all species of the invention and on which the non-elected claims depend is found allowable.

The examiner notes that Applicant provisionally election to prosecute the species of Figs. 1-2 in a telephone conversation with Examiner Saldano on 05 October 2004, and that this election was made **with** traverse.

However, because in his Remarks beginning on page 15 of his Amendment and Substitute Specification Pursuant to 37 CFR § 1.125 filed on 21 April 2005 (hereinafter referred to as "Amendment"), Applicant did not distinctly and specifically point out the supposed errors in the election of species requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

Response to Amendment

The amendment filed 21 April 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the substitute specification filed 21 April 2005 has not been entered because it adds new matter.

More particularly, several examples of what is considered new matter in the Substitute Specification will be discussed below.

(1) Page 4, line 1 of the Substitute Specification, the inclusion of "metal tubing" in the listing of heavier than water materials is considered new matter since on page 4, lines 17-18, the original specification stated that "Suitable heavier than water materials include metal rods and angle iron", but did not list "metal tubing" as being a suitable heavier than water material.

(2) Page 5, lines 25-29, of the Substitute Specification, state that "In another embodiment as illustrated in Figs. 5 and 6, the retainer structure 12 is neither a fixed or

fixable shape, but it is a flexible structure capable of conforming to the shape of the remediation materials placed within the retainer structure 12." However, the examiner cannot find where there is support for such in the original specification and the original drawing Figs. 5 and 6 do not provide support for such either. For all one of ordinary skill could tell from looking at drawing Figs. 5 and 6 without any written disclosure, the cross-sectional shape of the retainer structure shown in Fig. 6 could be a rigid foam or plastic. There is no way to tell from drawing Figs. 5 and 6 (without having any written description) that the retainer structure (12) is neither a fixed or fixable shape, but is a flexible structure capable of conforming to the shape of the remediation materials (42) placed within the retainer structure (12) and thus, the sentence in the Substitute Specification is deemed to constitute new matter.

(3) Page 5, line 32 through page 6, line 11, of the Substitute Specification states as follows:

> As illustrated, the retainer structure is arranged as either a layer of mesh material or a mesh bag or sack 15. Suitable materials for the mesh bag 15 include metal and plastic and are chosen to be flexible enough to conform to the materials placed within the mesh bad [sic] 15 and to the structures around which the mesh bag 15 is mounted or placed. In addition, the mesh bag 15 materials are preferably compatible with the environmental conditions and contaminants to which the retainer structure 12 is exposed. For example, if the retainer assembly 10 is used to contain oil-based contaminants, then the material of the mesh bag 15 is preferably not oleophilic. The mesh bag 15 includes a plurality of holes 17 to provide for adequate flow of liquids and contaminants to the materials contained within the mesh bag 15. The size of the holes 17 is selected to provide for both a sufficient flow of liquid through the mesh bag 15 and adequate retention of the materials within the mesh bag 15.

The examiner deems these sentences to constitute new matter as there is no disclosure in the original specification supporting that Fig. 5 shows either mesh material or a mesh

bag or sack 15. Although reference numeral 15 was shown in Fig. 5 as part of the original disclosure, one of ordinary skill in the art would not be able to tell from viewing Figs. 5 and 6 (without any written disclosure) that reference numeral 15 represents a mesh material or a mesh bag or sack. The intersecting lines could just be showing a design stamped on the outside of the structure. Nor would one of ordinary skill in the art be able to tell from viewing Figs. 5 and 6 (without any written disclosure), that the structure represented by reference numeral 15 was made of metal or plastic or that it was flexible enough to conform to the materials placed within. Further, one of ordinary skill in the art would not be able to tell from viewing Figs. 5 and 6 (without any written disclosure) that the structure represented by reference numeral 15 were "compatible with the environmental conditions and contaminants to which the retainer structure 12 is exposed" or that when "the retainer assembly 10 is used to contain oil-based contaminants, then the material of the mesh bag 15 is preferably not oleophilic." Additionally, one of ordinary skill in the art would not be able to tell from viewing Figs. 5 and 6 (without any written disclosure), that the structure represented by reference numeral 17 were holes to provide for adequate flow of liquids and contaminants to the materials contained in the structure represented by reference numeral 15 or that the size of the holes is selected to provide for both a sufficient flow of liquid through the structure represented by reference numeral 15 and adequate retention of the materials within the structure represented by reference numeral 15.

(4) Page 8, lines 29-31, the Substitute Specification states that "In addition, each spoke member 26 can be arranged as a hinged or telescoping structure (not shown) or

can be constructed from an elastic material to provide the desired movement." Although there appears to be support in the original disclosure (i.e., Fig. 8) for the spoke member being a "hinged" structure there is no support in the original disclosure for the spoke member being a "telescoping" structure. Nor is there support in the original disclosure for the spoke member to be constructed of an elastic material since the cross-hatching appears to show that the spoke member is made of metal (see the Manual of Patent Examining Procedure (MPEP) § 608.02(IX) - Drawing Symbols).

(5) Page 9, lines 14-22, the Substitute Specification states:

> In the embodiment illustrated in Fig. 5 and 6, a plurality of rigid tether elements 28 are passed through one or more of the openings 17 in the mesh bag 15 to anchor the retainer structure 12 in the desired location. The distal end 38 of each tether element 28 is sufficiently larger than the opening 17 through which the tether element 28 is passed. In this embodiment, neither flexible nor rigid spoke members are required, because the mesh bag 15 structure provides for the desired range of motion of the retainer structure 12. This structure includes using elastic materials in the mesh bag 15 and providing a sufficient amount of slack, material or space in the mesh bag 15 to permit the materials within the bag to move or float.

The examiner deems that this paragraph constitutes new matter because as stated above, there is no support in the original disclosure for the structure represented by reference numeral 15 to be a "mesh bag" or the structure represented by reference numeral 17 to be "openings." Further, there is no support in the original disclosure that the structure represented by reference numeral 15 "provides for the desired range of motion of the retainer structure 12", or "using elastic materials" in the structure represented by reference numeral 15, or "providing a sufficient amount of slack, material or space" in the structure represented by reference numeral 15 "to permit the

materials within the bag to move or float." One of ordinary skill in the art from viewing Figs. 5 and 6 (without any written disclosure) would not be able to discern these things and therefore, they constitute new matter.

(6) Page 10, lines 2-7, the Substitute Specification states as follows:

> In the embodiment illustrated in Figs. 5 and 6, the attachment mechanism is provided by the structure of the mesh bag 15. Although additional structure such as cable ties or straps can be provided, preferably, the remediation materials 42 are simply maintain [sic] within the interior 43 of the mesh bag 15. Openings can be provided in the mesh bag to provide for removal and replacement of the remediation materials 42, or the remediation materials 42 can be permanently enclosed within the mesh bag 15.

The examiner deems this to constitute new matter since as stated above, there is no support in the original disclosure for the structure represented by reference numeral 15 to be a "mesh bag" or the structure represented by reference numeral 17 to be "openings." Further, there is no support in the original disclosure that the embodiment of the invention shown in Figs. 5-6 could be provided with additional structure such as cable ties or straps to help maintain the remediation materials 42 within the structure represented by reference numeral 15. Further, there is no support in the original disclosure that the structure represented by reference numeral 15 has openings "to provide for removal and replacement of the remediation materials.

(7) Page 11, line 6, the Substitute Specification states that examples of suitable remediation materials 42 for use with the retainer structure 12 includes "diatomaceous earth" which constitutes new matter because diatomaceous earth was not included in the listing of suitable remediation materials in the original specification on page 7, lines 24-27.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference characters not mentioned in the description: reference numerals "15" shown in Figs. 5 and 6, reference numeral "17" shown in Fig. 5, reference numeral "43" shown in Fig. 6, and reference numeral "29" shown in Fig. 8. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because line 6-6 shown in Fig. 5 and line 11-11 shown in Fig. 10 are not described in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

(1) page 3, lines 11-12, of the original specification, the brief description of Fig. 5 is incorrect because it shows a plan view, not a cross-sectional view;

(2) page 3, line 13, of the original specification, the brief description of Fig. 6 is incorrect because it shows a cross-sectional view, not a plan view;

(3) page 3, line 14, of the original specification, the brief description of Fig. 7 is incorrect because there is no line 7-7 shown in Fig. 6;

(4) page 3, lines 14-16, of the original specification, the brief description of Fig. 8 should identify that it is the same embodiment as shown in Fig. 7, but showing the remediation material 42 in a raised position;

(5) page 3, lines 5-16, of the original specification, give the brief description of the drawing figures, but there is no explanation of Figs. 9-12;

(6) page 6, lines 5-6, of the original specification, have reference numeral "28" representing both "tether element" and shaft of spoke member 26;

(7) page 6, line 12, of the original specification, there should be a space inserted after the comma between reference numerals "26" and "28";

(8) page 6, lines 14 and 20, of the original specification, the first occurrence of reference numeral "42" on each line should be changed to --40--;

(9) page 6, line 25, of the original specification, "Fig. 5" should be changed to -- Fig. 9--;

(10) page 7, line 8, of the original specification, "Fig. 8" should be changed to -- Fig. 12--;

(11) page 7, line 16, of the original specification, "Figs. 6 and 7" should be changed to --Figs. 10 and 11--;

(12) pages 3-8 of the original specification (i.e., the Detailed Description section) use the term spoke member 26.. While Applicant is allowed to be his own lexicographer, he is not allowed to use words in such a way that they are repugnant to their original meanings or dictionary definitions. Merriam-Webster's Collegiate Dictionary (Tenth Edition, Copyright 1997, published by Merriam-Webster, Incorporated, Springfield, Massachusetts) defines "spoke" as 1a: any of the small radiating bars inserted in the hub of a wheel to support the rim; b: something resembling the spoke of a wheel; 2: any of the projecting handles of a steering wheel of a boat. The use of the term spoke

member for Figs. 1 and 2 appears okay since in that embodiment the members appear to resemble a spoke. However, it is not seen how the embodiments of Figs. 3-12 show "spoke members"; and

(13) pages 3-8 of the original specification (i.e., the Detailed Description section) describe at least seven embodiments of the present invention. It is noted that both the spoke members and the tether members take on very different structural forms in the different embodiments and therefore, it is confusing that different structure is being given the same reference numeral. It is customary in patent practice to give differing embodiments different numbers, such as the tether member in the first embodiment could be given reference numeral 28, in the second embodiment reference numeral 128, in the third embodiment reference numeral 228, and so on.

Appropriate correction is required. However, care should be taken so that no new matter is added.

Claim Objections

Claims 5, 8, and 18 are objected to because of the following informalities:

claims 5 and 18, lines 1-2, recite that the retainer structure comprises "plastic tubing, inflatable tubing, closed cell foam material or combinations thereof", which appears to be in improper Markush group format as being a list of optional elements and the examiner suggest rewording as --the retainer structure comprising any one selected from the group consisting of plastic tubing, inflatable tubing, closed cell foam material, and combinations thereof--; and

claim 8, lines 1-2, recites that the flexible elements comprise "cord, rope, cable or combinations thereof", which appears to be in improper Markush group format as being a list of optional elements and the examiner suggest rewording as --the flexible elements comprise any one selected from the group consisting of cord, rope, cable, and combinations thereof--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-10, 13, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dreyer (U.S. Patent Application Publication No. 2002/0172560).

As to claim 1, Dreyer discloses a retainer assembly (see Fig. 1) comprising:

a retainer structure (12) arranged to impart a desired shape to the retainer assembly;

an anchor assembly (40, 42, 44) attached to the retainer structure (12) and arranged to define the limits of motion of the retainer structure (12) in three dimensions with respect to a selected anchor point; and

an attachment mechanism (either stitches from sewing or a heat bond through heat fusion) to secure one or more remediation materials (oleophilic geosynthetic fabric of curtain member (14)) to the retainer structure (12).

The examiner notes that Dreyer discloses a floatation unit which can be considered to be a retainer structure (12). The recitation of being "arranged to impart a desired shape to the retainer assembly" is a recitation of intended use and as such the examiner only need show that the reference is capable of performing the intended use. The examiner deems Dreyer to be capable of being "arranged to impart a desired shape to the retainer assembly" because clearly retainer structure 12 can be arranged into an arc as shown in Fig. 1 or a straight line or whatever shape is needed in order for the assembly to function properly. Dreyer also discloses an anchor assembly (44, 40, 42) attached to the retainer structure (12) through curtain sleeve (16). The anchor assembly (44, 40, 42) is capable of performing the intended use of being "arranged to define the limits of motion of the retainer structure in three dimensions with respect to a selected anchor point." Dreyer further discloses an attachment mechanism comprising either stitches from sewing or a heat bond through heat fusion (see page 2, paragraph no. [0020]), whereby curtain member (14), typically made from oleophilic geosynthetic fabric, is secured to the retainer structure (12). The examiner notes that oleophilic geosynethtic fabric is a remediation material because it absorbs or attracts oil (see page 3, paragraph no. [0031]).

As to claim 2, Dreyer discloses the retainer assembly of claim 1 as discussed above, and Dreyer also disclose that the retainer structure (12) comprises a buoyant retainer structure.

The examiner notes that Dreyer discloses that the floatation unit or retainer structure (12) may comprise inflatable devices, air bags, and floats made from buoyant material such as cork, synthetic foams or other plastics (see page 4, paragraph no. [0044]).

As to claim 3, Dreyer discloses the retainer assembly of claim 1 as discussed above, and Dreyer also discloses that the retainer structure (12) is selectively positionable in a plurality of desired shapes.

The examiner notes that Dreyer's floatation unit or retainer structure (12) is capable of performing the intended use of being "selectively positionable in a plurality of desired shapes." Although Fig. 1 shows Dreyer's floatation unit or retainer structure (12) as being a circular arc cross-sectional shape, Dreyer further discloses that the floatation unit or retainer structure (12) may comprise one or more lengths of buoyant material (see page 2, paragraph no. [0020]) and thus may be shaped into other desired shapes such as a straight line or a ninety-degree corner, etc.

As to claim 5, Dreyer discloses the retainer assembly of claim 1 as discussed above, and Dreyer also discloses that the retainer structure (12) comprises plastic tubing, inflatable tubing, closed cell foam material or combinations thereof.

The examiner notes that Dreyer discloses that the floatation unit or retainer structure 12 may comprise inflatable devices, air bags, and floats made from buoyant

material such as cork, synthetic foams or other plastics (see page 4, paragraph no. [00441]) and thus, since the claim is worded in the alternative (i.e., "or") this recitation is met.

As to claim 6, Dreyer discloses the retainer assembly of claim 1 as discussed above, and Dreyer also discloses that the anchor assembly (40, 42, 44) comprises a plurality of spoke members (44) and at least one tether element (42), wherein each spoke member (44) comprises a first end attached to a distinct location on the retainer structure (12) and a second end in contact with the tether element (42).

The examiner notes that Dreyer discloses that the anchor assembly comprises spoke members (44) and at least one tether element (42) whereby the spoke is attached to the retainer structure (12) via sleeve (16) and in contact with the tether element (42) at block anchor (40).

As to claim 7, Dreyer discloses the retainer assembly of claim 6 as discussed above, and Dreyer also discloses that the spoke members (44) comprise flexible elements.

The examiner notes that Dreyer discloses that the spoke member (44) may be cables or wires (see page 2, paragraph no. [0027]), which are inherently flexible elements.

As to claim 8, Dreyer discloses the retainer assembly of claim 7 as discussed above, and Dreyer also discloses that the flexible elements comprise cord, rope, cable or combinations thereof.

The examiner notes that Dreyer discloses that the spoke member (44) may be cables or wires (see page 2, paragraph no. [0027]) and since the claim is worded in the alternative (i.e., "or") the claim recitation is met.

As to claim 9, Dreyer discloses the retainer assembly of claim 6 as discussed above, and Dreyer also discloses the spoke members (44) are releasably attached to the retainer structure (12).

The examiner notes that Dreyer discloses that the anchors may be releasably or temporarily installed (see page 2, paragraph no. [0027]).

As to claim 10, Dreyer discloses the retainer assembly of claim 6 as discussed above, and Dreyer also discloses that the tether element (42) comprises a flexible element.

The examiner notes that Dreyer discloses that the tether elements may be cables or chains (see page 2, paragraph no. [0027]), which are inherently flexible elements.

As to claim 13, Dreyer discloses the retainer assembly of claim 1 as discussed above, and Dreyer also discloses that the attachment mechanism (40, 42, 44) is arranged to provide for releasable attachment of the remediation material to the retainer structure.

The examiner notes that Dreyer discloses an attachment mechanism comprising either stitches from sewing or a heat bond through heat fusion whereby curtain member (14) the retainer structure (12). When the attachment mechanism is a sewing stitch, the curtain member, which comprises remediation material, may be released through removal of stitches.

As to claim 16, Dreyer discloses the retainer assembly of claim 1 as discussed above, and Dreyer also discloses that the remediation material comprises one or more tubular fabric structures comprising an oleophilic material.

The examiner notes that Dreyer's Fig. 1 illustrates the curtain member (14), typically made from oleophilic geosynthetic fabric. The curtain (14) is formed into a tubular fabric structure at sleeve (16).

As to claim 17, Dreyer discloses a retainer assembly comprising:

a buoyant retainer structure (12) arranged to impart a desired shape to the retainer assembly;

an anchor assembly (40, 42, 44) attached to the retainer structure (12) and arranged to define the limits of motion of the retainer structure (12) in three dimensions with respect to a selected anchor point, wherein the anchor assembly (40, 42, 44) comprises a plurality of spoke members (44) and at least one tether element (42) and wherein each spoke member (44) comprises a first end attached to a distinct location on the retainer structure (12) and a second end in contact with the tether element (42); and

an attachment mechanism (either stitches from sewing or a heat bond through heat fusion) to secure one or more remediation materials (oleophilic geosynthetic fabric of curtain member (14)) to the retainer structure (12).

The examiner notes that Dreyer discloses a floatation unit which can be considered to be a retainer structure (12). The recitation of being "arranged to impart a desired shape to the retainer assembly" is a recitation of intended use and as such the examiner only need show that the reference is capable of performing the intended use.

The examiner deems Dreyer to be capable being "arranged to impart a desired shape to the retainer assembly" because clearly retainer structure 12 can be arranged into an arc as shown in Fig. 1 or a straight line or whatever shape is needed in order for the assembly to function properly. Dreyer also discloses an anchor assembly (44, 40, 42) attached to the retainer structure (12) through curtain sleeve (16). The anchor assembly (44, 40, 42) is capable of performing the intended use of being "arranged to define the limits of motion of the retainer structure in three dimensions with respect to a selected anchor point." Dreyer discloses that the anchor assembly comprises spoke members (44) and at least one tether element (42) whereby the spoke is attached to the retainer structure (12) via sleeve (16) and in contact with tether (42) at block anchor (40). Dreyer further discloses an attachment mechanism comprising either stitches from sewing or a heat bond through heat fusion (see page 2, paragraph no. [0020]), whereby curtain member (14), typically made from oleophilic geosynthetic fabric, is secured to the retainer structure (12). The examiner notes that oleophilic geosynethtic fabric is a remediation material because it absorbs or attracts oil (see page 3, paragraph no. [0031]).

As to claim 18, Dreyer discloses the retainer assembly of claim 17 as discussed above, and Dreyer also discloses that the retainer structure (12) comprises plastic tubing, inflatable tubing, a closed cell foam material or combinations thereof.

The examiner notes that Dreyer discloses that the floatation unit or retainer structure 12 may comprise inflatable devices, air bags, and floats made from buoyant material such as cork, synthetic foams or other plastics (see page 4, paragraph no.

[00441]) and thus, since the claim is worded in the alternative (i.e., "or") this recitation is met.

As to claim 19, Dreyer discloses the retainer assembly of claim 17 as discussed above, and Dreyer also discloses that the remediation material comprises one or more tubular fabric structures comprising an oleophilic material.

The examiner notes that Dreyer's Fig. 1 illustrates the curtain member (14), typically made from oleophilic geosynthetic fabric. The curtain (14) is formed into a tubular fabric structure at sleeve (16).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Mattson (U.S. Patent No. 6,332,737).

As to claim 1, Mattson discloses a retainer assembly comprising:

a retainer structure (20, 22) arranged to impart a desired shape to the retainer assembly;

an anchor assembly (27) attached to the retainer structure (20, 22) and arranged to define the limits of motion of the retainer structure (20, 22) in three dimensions with respect to a selected anchor point (see Figs. 1 and 4); and

an attachment mechanism (34) to secure one or more remediation materials (16) to the retainer structure (20, 22).

The examiner notes that the recitation of being "arranged to impart a desired shape to the retainer assembly" is a recitation of intended use and as such the examiner only need show that the reference is capable of performing the intended use.

The examiner deems Mattson to be capable of being "arranged to impart a desired shape to the retainer assembly" because any structure imparts a desired shape to what it is a part of. The examiner also notes that the hydrocarbon absorbent sock (16) of Mattson is a remediation material.

Response to Arguments

Applicant's arguments filed 21 April 2005 have been fully considered but they are not persuasive.

More particularly, Applicant alleges that "There is no teaching or disclosure in Dreyer of a retainer structure that imparts a desired shape, i.e. a circle or rectangle, to the overall retainer assembly. The examiner disagrees. The examiner notes that Applicant's claims are extremely broadly recited and as such, Dreyer reads on those claims as discussed in detail above. Dreyer's retainer structure (12) imparts an arc shaped to its retainer assembly and could be arranged to impart other shape such as circular and rectangular, although these recitations (i.e., circular or rectangular) are not recited in the claims.

Applicant also argues that Dreyer is not positioned over objects like a manhole or a storm drain, but the examiner notes that these are not limitations recited in the claims.

Applicant also argues that Dreyer's floatation unit allows the boom to bend or flex with the current of the body of water in which it is placed, but he has not stated how this affects Dreyer's reading on the claims.

With respect to Mattson, Applicant argues that "There is no teaching or disclosure in Mattson of a retainer structure that imparts a desired shape, i.e., a circle or rectangle, to the overall retainer assembly." (Underlining added). First, the examiner notes that the limitation of circular or rectangular are not recited in the claims. Then, the examiner notes that as extremely broadly as Applicant's claims are written, Mattson reads on claim 1 as discussed above. It is noted that a retainer structure imparts a desired shape to whatever retainer assembly it is a part of and that Mattson meets the recitation of intended use.

Applicant's also argue that:

> In addition, Mattson fails to teach or disclose an anchor assembly attached to the retainer structure and arranged to define the limits of motion of the retainer structure in three dimensions with respect to a selected anchor point. In fact, the anchor shoes of Mattson are staked on the sides of a creek and coupled to the ends of the boom. Therefore, the boom of Mattson cannot move at all and does not provide for any motion. In fact, water will eventually begin to spill over the top of the boom in Mattson. The limits of motion recited in the present invention provide for movement of the retainer assembly, for example flotation, while still maintaining the assembly in proper alignment with the desired structure, i.e. a storm drain, and the remediation materials in proper alignment for example on the top of the water to catch contaminants that are lighter than water. This movement allows for changes in water flow that are typical of rain events. (Underlining added).

The examiner notes that Applicant's above-stated arguments are not at all commensurate with the scope of the claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571)-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gay Ann Spahn, Patent Examiner
September 8, 2005

HEATHER SHACKELFORD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600